IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 127 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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COMMISSIONER OF INCOME-TAX

Versus

ARBUDA MILLS LIMITED

Appearance:

1. INCOME TAX REFERENCE No. 127 of 1994

MR MANISH R BHATT for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 26/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following question is referred for our opinion in respect of assessment year 1985-86:-

"Whether, the Appellate Tribunal is right in law and on facts in directing the ITO to allow a sum of Rs.87027/- being technical service fee paid to Mettur Beardshell Ltd. for use of its trade mark, as a revenue expenditure?"

2. We have heard Mr MR Bhatt, learned Senior Standing Counsel for the revenue. Though served none appears for the respondent - assessee.

3. At the hearing of this Reference, our attention is invited to the decision of this Court in CIT vs. Ashoka Mills Ltd. (1996) 218 ITR 526 wherein this Court had an occasion to consider the similar agreement for user of the trademark "Tebilized" for which payment was made to Mettur Beardshell Ltd. This Court held in the said decision that agreement permitting that assessee to make use of a particular process and the user of the trademark "Tebilized" did not create any asset nor did they confer any right of the permanent nature in favour of the assessee. The agreement merely enabled the assessee to confer on the product the advantages of better quality and marketability. Hence, the payment of royalty was, therefore, clearly in the course of profit earning process and not for acquisition of an asset or right of a permanent character. The payment was, therefore, held to be deductible as revenue expenditure.

Following the aforesaid decision, our answer to question is in the affirmative i.e. in favour of the assessee and against the revenue.

4. The Reference accordingly stands disposed of with no order as to costs.

(M.S. Shah,J) (K.A. Puj,J)

zgs/-